

safety violations. The compliance review may result in the initiation of an enforcement action.

(2) *Safety audit* means an examination of a motor carrier's operations to provide educational and technical assistance on safety and the operational requirements of the FMCSRs and applicable HMRs and to gather critical safety data needed to make an assessment of the carrier's safety performance and basic safety management controls. Safety audits do not result in safety ratings.

(3) *Safety management controls* means the systems, policies programs, practices, and procedures used by a motor carrier to ensure compliance with applicable safety and hazardous materials regulations which ensure the safe movement of products and passengers through the transportation system, and to reduce the risk of highway accidents and hazardous materials incidents resulting in fatalities, injuries, and property damage.

(4) *Roadability review* means an on-site examination of the intermodal equipment provider's compliance with the applicable FMCSRs.

RSPA means the Research and Special Programs Administration.

Safety fitness determination means the final determination by FMCSA that a motor carrier meets the safety fitness standard under § 385.5.

Safety rating or rating means a rating of "Satisfactory," "Conditional" or "Unsatisfactory," which the FMCSA assigns to a motor carrier using the factors prescribed in § 385.7, as computed under the Safety Fitness Rating Methodology (SFRM) set forth in Appendix B to this part and based on the carrier's demonstration of adequate safety management controls under § 385.5(a). A safety rating of "Satisfactory" or "Conditional" is necessary, but not sufficient, to meet the overall safety fitness standard under § 385.5.

(1) *Satisfactory safety rating* means that a motor carrier has in place and functioning safety management controls adequate to meet that portion of the safety fitness standard prescribed in § 385.5(a). Safety management controls are adequate for this purpose if they are appropriate for the size and

type of operation of the particular motor carrier.

(2) *Conditional safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with that portion of the safety fitness standard prescribed in § 385.5(a), which could result in occurrences listed in § 385.5(a)(1) through (a)(11).

(3) *Unsatisfactory safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with that portion of the safety fitness standard prescribed in § 385.5(a), and this has resulted in occurrences listed in § 385.5(a)(1) through (a)(11).

(4) *Unrated carrier* means that the FMCSA has not assigned a safety rating to the motor carrier.

[53 FR 50968, Dec. 19, 1988, as amended at 56 FR 40805, Aug. 16, 1991; 62 FR 60042, Nov. 6, 1997; 67 FR 12779, Mar. 19, 2002; 67 FR 31983, May 13, 2002; 69 FR 39367, June 30, 2004; 72 FR 36788, July 5, 2007; 73 FR 76818, Dec. 17, 2008; 75 FR 17240, Apr. 5, 2010]

§ 385.4 Matter incorporated by reference.

(a) *Incorporation by reference.* Part 385 includes references to certain matter or materials, as listed in paragraph (b) of this section. The text of the materials is not included in the regulations contained in part 385. The materials are hereby made a part of the regulations in part 385. The Director of the Federal Register has approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For materials subject to change, only the specific version in the regulation is incorporated. Material is incorporated as it exists on the date of the approval and a notice of any changes in these materials will be published in the FEDERAL REGISTER.

(b) *Matter or materials referenced in part 385.* The matter or materials in this paragraph are incorporated by reference in the corresponding sections noted.

(1) "North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities

§ 385.5

of Radioactive Materials as defined in 49 CFR Part 173.403," January 1, 2004. Information and copies may be obtained from the Commercial Vehicle Safety Alliance, 1101 17th Street, NW., Suite 803, Washington, DC 20036. Phone number (202) 775-1623.

(2) All of the materials incorporated by reference are available for inspection at: Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance (MC-EC), 1200 New Jersey Ave., SE., Washington, DC 20590-0001; and the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

[69 FR 39367, June 30, 2004, as amended at 72 FR 55700, Oct. 1, 2007]

§ 385.5 Safety fitness standard.

A motor carrier must meet the safety fitness standard set forth in this section. Intrastate motor carriers subject to the hazardous materials safety permit requirements of subpart E of this part must meet the equivalent State requirements. To meet the safety fitness standard, the motor carrier must demonstrate the following:

(a) It has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with:

(1) Commercial driver's license standard violations (part 383 of this chapter),

(2) Inadequate levels of financial responsibility (part 387 of this chapter),

(3) The use of unqualified drivers (part 391 of this chapter),

(4) Improper use and driving of motor vehicles (part 392 of this chapter),

(5) Unsafe vehicles operating on the highways (part 393 of this chapter),

(6) Failure to maintain accident registers and copies of accident reports (part 390 of this chapter),

(7) The use of fatigued drivers (part 395 of this chapter),

(8) Inadequate inspection, repair, and maintenance of vehicles (part 396 of this chapter),

49 CFR Ch. III (10-1-10 Edition)

(9) Transportation of hazardous materials, driving and parking rule violations (part 397 of this chapter),

(10) Violation of hazardous materials regulations (parts 170 through 177 of this title), and

(11) Motor vehicle accidents, as defined in § 390.5 of this chapter, and hazardous materials incidents.

(b) The motor carrier has complied with all requirements contained in any remedial directive issued under subpart J of this part.

[75 FR 17241, Apr. 5, 2010]

§ 385.7 Factors to be considered in determining a safety rating.

The factors to be considered in determining the safety fitness and assigning a safety rating include information from safety reviews, compliance reviews and any other data. The factors may include all or some of the following:

(a) Adequacy of safety management controls. The adequacy of controls may be questioned if their degree of formalization, automation, etc., is found to be substantially below the norm for similar carriers. Violations, accidents or incidents substantially above the norm for similar carriers will be strong evidence that management controls are either inadequate or not functioning properly.

(b) Frequency and severity of regulatory violations.

(c) Frequency and severity of driver/vehicle regulatory violations identified during roadside inspections of motor carrier operations in commerce and, if the motor carrier operates in the United States, of operations in Canada and Mexico.

(d) Number and frequency of out-of-service driver/vehicle violations of motor carrier operations in commerce and, if the motor carrier operates in the United States, of operations in Canada and Mexico.

(e) Increase or decrease in similar types of regulatory violations discovered during safety or compliance reviews.

(f) For motor carrier operations in commerce and (if the motor carrier operates in the United States) in Canada and Mexico: Frequency of accidents;